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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,277	08/06/2003	Kenneth E. Gall	H0004575	1365

7590 10/04/2004

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EXAMINER
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JENKINS, JERMAINE L

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/635,277	Applicant(s) GALL, KENNETH E.	
	Examiner Jermaine Jenkins	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08062003</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10 & 14-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10635351. Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited copending application teaches all the basic features of the claimed invention.

3. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4, 10, 14 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurtz et al (5,999,082).

In regards to claims 1, 10 & 14, Kurtz et al teaches a diaphragm (19) associated with a sensor cover and a base (15) located proximate to the sensor cover (Column 2, lines 52-59), and a dimple (20) located centrally within the diaphragm (19) wherein the dimple (20) comprises a component that is separate from diaphragm (19) and wherein the dimple (20) contacts a sense element of the sensor (Column 3, lines 28-40; See Figure 3).

With respect to claims 4 & 17, Kurtz et al teaches wherein the dimple (20) comprises a circular portion, which contacts the sense element, and wherein the dimple (20) comprises a highly polished surface to reduce stress concentrators (Column 3, lines 33-44; See Figure 1).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 2855

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 5-9 & 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz et al (5,999,082).

With respect to claims 5-9 & 17-20, Kurtz et al teaches the claimed invention except for the dimple being formed from a stainless steel material, a quartz sense element, a silicon sense element, and a ceramic sense element. However, it would have been obvious to one having ordinary skill in the art of pressure sensing devices at the time the invention was made to modify Kurtz et al with a stainless steel material, a quartz sense element, a silicon sense element, and a ceramic sense element since it has been held to be within the general skill of a worker in the art to select a material on the basis of its suitability and intended use. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to select any suitable material being readily available to the manufacture after undo experimentation for the purpose of creating a pressure sensing device that operates at optimum performance.

9. Claims 2, 3, 11-13, 15 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz et al (5,999,082) in view of Cullen (4,454,440).

In regards to claims 2, 3, 11, 15 & 16, Kurtz et al teaches the claimed invention except for a foil for blocking air permeation through the diaphragm when the sensor experiences pressure.

Cullen teaches a foil (32, being read as a cover portion) for blocking air permeation (being read as a vacuum enclosure) of air through the diaphragm (20) when the sensor experiences pressure (Column 3, line 59-Column 4, line 5). Therefore it would have been

Art Unit: 2855

obvious to one having ordinary skill in the art at the time the invention was made to incorporate a foil as taught by Cullen in the pressure sensing device of Kurtz et al for the purpose of providing a secured structure preventing the contamination of outside elements to the diaphragm while increasing the accuracy of pressure measurements.

With regards to claims 12 & 13, Kurtz et al teaches the claimed invention except for the dimple being formed from a stainless steel material and a ceramic material. However, it would have been obvious to one having ordinary skill in the art of pressure sensing devices at the time the invention was made to modify Kurtz et al with a stainless steel material and a ceramic material since it has been held to be within the general skill of a worker in the art to select a material on the basis of its suitability and intended use. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to select any suitable material being readily available to the manufacture after undo experimentation for the purpose of creating a pressure sensing device that operates at optimum performance.

### ***Conclusion***

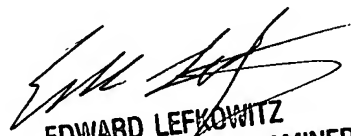
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermaine Jenkins whose telephone number is 571-272-2179. The examiner can normally be reached on Monday-Friday 8am-430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2855

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jermaine Jenkins  
A.U. 2855



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